

1                   **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2                   **OF THE STATE OF MONTANA**

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3   In the matter of the amendment                   )**PRESIDING OFFICER REPORT**  
4   of ARM 17.50.401, 17.50.402,                   )  
5   17.50.403, 17.50.410,                   )  
6   17.50.411, 17.50.412 and                   )  
7   17.50.416 pertaining to solid                   )  
8   waste fees                   )

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7                   **INTRODUCTION**

8           1.    On September 16, 2003, I presided over and  
9   conducted the public hearing held in Room 44 of the Metcalf  
10   Building, 1520 East Sixth Avenue, Helena, Montana, to take  
11   public comment on the above-captioned matter. Notice of the  
12   hearing was contained in 2003 Montana Administrative Register  
13   (MAR), Issue No. 15, MAR Notice No. 17-197, published on  
14   August 14, 2003, beginning at page 1720. A copy of the  
15   notice is attached to this report. The notice stated that  
16   the hearing would be held in Room 111. On the day of the  
17   hearing notices that the room had been changed were posted on  
18   entrance doors to the Metcalf Building and at the entrance to  
19   Room 111. Members of the public were present in Room 44 for  
20   the hearing.

21           2.    The hearing began at about 10:05 a.m. and concluded  
22   at about 10:30 a.m. Frank Patrick Crowley of DEQ operated a  
23   tape recorder to record the hearing.

24           3.    At the hearing I identified and summarized the MAR  
25   notice, stated that copies of the MAR notice were available  
26   in the hearing room, read the Notice of Function of  
27   Administrative Rule Review Committee as required by Mont.

1 Code Ann. § 2-4-302(7)(a), informed the persons at the  
2 hearing of the rulemaking interested persons list and of the  
3 opportunity to have their names placed on that list, recited  
4 the authority to make the proposed rule amendments, announced  
5 the opportunity to present matters at the hearing or in  
6 writing, as stated in the MAR notice, and explained the order  
7 of presentation.

8 4. At the conclusion of the hearing, I announced that  
9 the proposed rulemaking was expected to be considered by the  
10 Board at its meeting on December 5, 2003.

11 **SUMMARY OF HEARING**

12 5. Rick Thompson, Solid Waste Section, DEQ, made an  
13 oral statement and submitted a written statement of  
14 reasonable necessity. He also submitted a memorandum from  
15 Norm Mullen, DEQ Staff Attorney, with HB 521 Review and  
16 Private Property Assessment Act Checklist as required by  
17 HB 311. Solid waste regulations protect the public health  
18 and welfare from improper disposal of waste. The proposed  
19 amendments increase fees for solid waste management systems.  
20 The amendments impose a flat license fee and tonnage-based  
21 fees on certain classes of solid waste management systems.  
22 Fees were established by legislation in 1991 and have not  
23 been changed since then. The cost of the program now exceeds  
24 revenue. The 2001 Legislature amended the law so that the  
25 Board of Environmental Review establishes fees and the  
26 Department collects them. The Solid Waste Advisory Committee  
27 was involved in the proposed rulemaking. The base fee for

1 each class of facility increases by 20% and the tonnage fee  
2 by 9 cents from 31 cents to 40 cents per ton. Definitions in  
3 17.50.403 recognize waste management practices that are not  
4 in the current rule. The proposed new 17.50.410(1)(a)  
5 reflects changes in accounting practices. Changes in  
6 17.50.411 reflect changes based on Chapter 170 of the laws  
7 enacted by the 2001 Legislature. The current law requires  
8 that fees be based on the quantity and nature of the wastes.  
9 Reporting requirements in 17.50.412 are necessary to identify  
10 the various classes of facilities for fee purposes.  
11 DEQ recommends adoption of the amendments as proposed.

12 With respect to HB 521, there are no comparable federal  
13 regulations or guidelines. Therefore, no further analysis is  
14 necessary. With respect to HB 311, the fees do not have  
15 takings implications.

16 No other statements or writings were received at the  
17 public hearing.

18 **SUMMARY OF ADDITIONAL WRITTEN MATERIALS**

19 6. The Mayor, Town of Circle, submitted a letter  
20 asking for consideration of the impact of the fees on rural  
21 Montanans.

22 7. The Manager, L&C Solid Waste Services, submitted an  
23 e-mail commenting on the definition in 17.50.403(31) and  
24 stating that the estimates of weight per ton in 17.50.411(3)  
25 appear to be high.

26 8. Barry Damschon from Lewistown commented on  
27 17.50.411(3), which states that one cubic yard of loose

1 refuse weighs 300 pounds and one cubic yard of compacted  
2 refuse weighs 700 pounds. He stated that the experience of  
3 several landfills is that uncompacted refuse weighs 150-200  
4 pounds per cubic yard and compacted weighs 450-500 pounds per  
5 cubic yard.

6 9. On September 23, 2003, Pat Crowley, DEQ Solid Waste  
7 Regulatory Program Manager, submitted a memorandum describing  
8 a conflict between two subsections of the proposed rule  
9 amendments and ARM 17.50.530(1)(h) pertaining to landfill  
10 closure. The DEQ memorandum suggested changes to the  
11 proposed amendment of ARM 17.50.403(13), pertaining to the  
12 definition of the term "interim closure" and to  
13 ARM 17.50.410(7) pertaining to fees at a facility in interim  
14 closure.

15 **PRESIDING OFFICER COMMENTS**

16 10. The Board has jurisdiction to adopt solid waste  
17 management fees, including license fees and tonnage fees.  
18 Mont. Code Ann. § 75-10-115. The fees adopted must cover the  
19 costs to the department of licensing solid waste management  
20 systems. Mont. Code Ann. § 75-10-221(6).

21 11. House Bill 521 (1995) generally provides that the  
22 Board may not adopt a rule that is more stringent than  
23 comparable federal regulations or guidelines, unless the  
24 Board makes written findings after public hearing and  
25 comment. The proposed rules are not more stringent than a  
26 comparable federal regulation or guideline. Therefore  
27 written findings are not necessary.

12. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. §§ 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. A Private Property Assessment Act Checklist was prepared in this matter. The proposed rules do not have takings implications. Therefore, no further HB 311 assessment is necessary.

13. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and opportunity for comment, have been followed.

14. The Board may adopt the proposed rule amendments, or reject them, or adopt the rules with revisions not exceeding the scope of the public notice.

15. Under Mont. Code Ann. § 2-4-305(7), for any acts in the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by February 13, 2004.

Dated this                      day of September, 2003.

THOMAS G. BOWE  
Presiding Officer